



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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[www.deq.virginia.gov](http://www.deq.virginia.gov)

Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

**STATE WATER CONTROL BOARD**  
**ENFORCEMENT ACTION - ORDER BY CONSENT**  
**ISSUED TO**  
**National Capital Area Council, BSA**  
**FOR**  
**Goshen Scout Reservation**  
**Unpermitted Discharge**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and National Capital Area Council, Boy Scouts of America, regarding the Goshen Scout Reservation, for the purpose of resolving certain violations of the State Water Control Law.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the DEQ, as described in Va. Code § 10.1-1185.
4. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

5. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
6. "Facility" means the Goshen Scout Reservation located at 340 Millard Burke Memorial Highway, Goshen, Virginia 24439 which includes three resident Boy Scout Camps and a sewage treatment lagoon.
7. "National Capital Area Council, BSA" means National Capital Area Council, Boy Scouts of America, a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. National Capital Area Council, BSA is a "person" within the meaning of Va. Code § 62.1-44.3.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.

12. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "Va. Code" means the Code of Virginia (1950), as amended.
16. "VAC" means the Virginia Administrative Code.
17. "VDH" means Virginia Department of Health.
18. "VPDES" means Virginia Pollutant Discharge Elimination System.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. National Capital Area Council, BSA owns and operates Goshen Scout Reservation (Facility), a Boy Scout camp in Goshen, Virginia.
2. On September 21, 2015, VDH staff notified DEQ staff of an existing sewage lagoon at the Facility. The lagoon was discovered by VDH when National Capital Area Council, BSA requested approval from VDH for a new alternative onsite sewage system to accommodate flows from the Facility. VDH staff advised that the proposed new system would take the place of the existing lagoon, which appeared to be in use for a long time, and that VDH did not have any record of any permits for the lagoon.
3. On October 15, 2015, DEQ-Valley Regional Office staff conducted an inspection of the Facility and observed that a facultative sewage treatment lagoon with a constructed discharge structure was located at the Facility. The lagoon receives wastewater from eleven buildings (8 cabins, laundry building, Coleman B Mark Health Center, and the Post Lodge). No active discharge from the lagoon was observed during the inspection. Review of original plan drawings from 1966 provided by BSA indicate that the lagoon was designed and constructed with an outlet structure to receive discharge flow and direct it to a chlorine contact tank. From the chlorine contact tank, effluent was designed to flow to a V-notch weir leading to a 4-inch line with an outfall to the Calfpasture River. At the time of the inspection, no chlorine supply was present in the contact tank. Trees and brush were growing on the berm of the lagoon and animal damage to the berm was noted.
4. On October 20, 2015, the National Capital Area Council, BSA notified DEQ that a discharge was occurring from the sewage treatment lagoon at the Facility.

5. On October 27, 2015, DEQ issued Notice of Violation No. 15-10-VRO-004 to National Capital Area Council, BSA for discharging sewage into state waters without a permit.
6. Va. Code §62.1-44.5 states that: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances..."
7. The Regulation, at 9 VAC 25-31-50 states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
8. The Department has issued no permits or certificates to National Capital Area Council, BSA.
9. The Calfpasture River is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
10. On October 29, 2015, National Capital Area Council, BSA responded to DEQ that the existing lagoon was constructed in 1966 and is currently still in use. As part of ongoing renovations to the Facility, National Capital Area Council, BSA advised that a new septic system was under construction and the lagoon would be abandoned in the future.
11. On November 9, 2015, DEQ staff met with National Capital Area Council, BSA representatives to discuss National Capital Area Council, BSA compliance options. DEQ requested a lagoon closure plan and schedule for closure, in addition to a schedule for when the new septic system would be operational.
12. On March 30, 2016, John Burleson, of Burleson Engineering, PLLC (Burleson) advised DEQ on behalf of National Capital Area Council, BSA, that the new septic system was functional and the sewer mains leading to the lagoon were disconnected.
13. On April 14, 2016, Burleson on behalf of National Capital Area Council, BSA submitted to DEQ an Application for Closure Plan Approval proposing to decant the approximated 812,515 gallons of liquid from the lagoon into either an unnamed tributary to the Little Calfpasture River or an unnamed tributary to the Calfpasture River.
14. On May 17, 2016, the Virginia Department of Health issued an operating permit to National Capital Area Council, BSA for the new septic system under Permit #HDID:181-15-0109.
15. On June 16, 2016, Burleson submitted to DEQ a report with initial sampling data, characterization results, and summary discussion regarding the contents of the lagoon.

16. On July 26, 2016, DEQ staff advised Burleson on behalf of National Capital Area Council, BSA that in order to discharge wastewater from the lagoon as proposed in the closure plan, a VPDES individual permit must be issued to National Capital Area Council, BSA for the discharge.
17. Based on the results of the October 15, 2015 inspection and the information provided by National Capital Area Council, BSA from October 20, 2015 to June 16, 2016, the Board concludes that National Capital Area Council, BSA has violated Va. Code §62.1-44.5 and 9 VAC 25-31-50 by discharging sewage into state waters without a permit, therefore failing to comply with the State Water Control Law and Regulation, as described in paragraphs C(2) through C(4) above.
18. In order for National Capital Area Council, BSA to return to compliance, DEQ staff and representatives of National Capital Area Council, BSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders National Capital Area Council, BSA, and National Capital Area Council, BSA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$26,000 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

National Capital Area Council, BSA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, National Capital Area Council, BSA shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of National Capital Area Council, BSA for good cause shown by National Capital Area Council, BSA, or on

its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 15-10-VRO-004 dated October 27, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, National Capital Area Council, BSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. National Capital Area Council, BSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. National Capital Area Council, BSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by National Capital Area Council, BSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. National Capital Area Council, BSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. National Capital Area Council, BSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. National Capital Area Council, BSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and National Capital Area Council, BSA. Nevertheless, National Capital Area Council, BSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. the Director or his designee terminates the Order after National Capital Area Council, BSA has completed all of the requirements of the Order;
  - b. National Capital Area Council, BSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to National Capital Area Council, BSA.

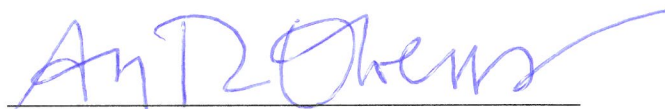
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve National Capital Area Council, BSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by National Capital Area Council, BSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.



13. The undersigned representative of National Capital Area Council, BSA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind National Capital Area Council, BSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of National Capital Area Council, BSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, National Capital Area Council, BSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18<sup>th</sup> day of November, 2016.

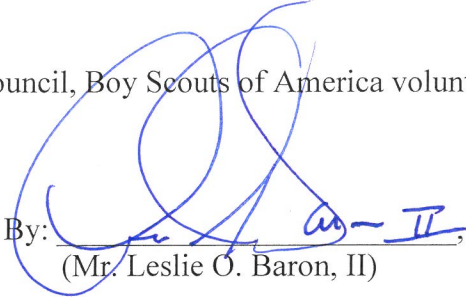


Amy T. Owens, Regional Director  
Department of Environmental Quality

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National Capital Area Council, Boy Scouts of America voluntarily agrees to the issuance of this Order.

Date: 9/20/16 By:   
(Mr. Leslie O. Baron, II) (Scout Executive/CEO)

National Capital Area Council, Boy Scouts of America

Commonwealth of Virginia  
City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 20<sup>th</sup> day of September, 2016, by Mr. Leslie O. Baron, II who is Scout Executive/CEO of National Capital Area Council, Boy Scouts of America, on behalf of the corporation.

ALFRED SO GO  
Notary Public  
# 7617866  
Registration No.

My commission expires: 3/31/2018

Notary seal:

ALFRED SO GO  
NOTARY PUBLIC  
REG. #7617866  
COMMONWEALTH OF VIRGINIA  
MY COMMISSION EXPIRES MARCH 31, 2018

## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **1. Unpermitted Discharge/Spill**

- a. National Capital Area Council, BSA shall prevent all discharges of sewage from the sewage lagoon at the Facility to the Calfpasture River and/or its tributaries until authorization for any such discharges is issued under a VPDES permit.
- b. By November 1, 2016, National Capital Area Council, BSA shall submit to DEQ a complete application for coverage under a VPDES permit to discharge from the sewage lagoon, for the purposes of permanently closing the sewage lagoon.
- c. By November 1, 2016, National Capital Area Council, BSA shall submit to DEQ an updated Application for Closure Plan Approval that includes a schedule for lagoon closure.
- d. Upon approval by DEQ, the Closure Plan and schedule shall become a part of and enforceable under the terms of this Order.

### **2. DEQ Contact**

Unless otherwise specified in this Order, National Capital Area Council, BSA shall submit all requirements of Appendix A of this Order to:

Tamara Jo Ambler  
Enforcement Specialist Senior  
Virginia Department of Environmental Quality  
540.574.7896 [tamara.ambler@deq.virginia.gov](mailto:tamara.ambler@deq.virginia.gov)  
4411 Early Road, P.O. Box 3000, Harrisonburg VA 22801  
FAX: 540.574.7878 WEB: [www.deq.virginia.gov](http://www.deq.virginia.gov)